

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1475 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? YES

2. To be referred to the Reporter or not? YES

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? NO

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO

5. Whether it is to be circulated to the Civil Judge?  
NO

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SMT. NIRMALABEN ARVINDBHAI ITWALA

Versus

KALAVATIBEN NATWARLAL SINDHWAWALA  
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Appearance:

MR PN BAVISHI for Petitioners

MR JV DESAI for Respondent No. 1

MR TH SOMPURA, ADDL.PUBLIC PROSECUTOR for Respondent No. 3  
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CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 17/07/97

ORAL JUDGEMENT

The petition is filed challenging a complaint  
which was lodged before the Bharuch City Police Station  
and registered as such, by the said Police Station as  
Crime Register No.30 of 1997. The complaint is dated  
27.2.1997 and discloses an offence punishable under

Section 188 of IPC, alleging that, by virtue of Section 195 of the Code of Criminal Procedure, 1973, cognizance could not be taken unless the complaint is filed by the public servant concerned, the registration of the FIR by the police is required to be interfered with by this Court.

Drawing upon the reasoning given by the Honourable Supreme Court in the case of JEHAN SINGH v. DELHI ADMINISTRATION, AIR 1974 S.C. 1146, paragraphs 6 to 11, ld.Advocate Mr.Desai for the respondent complainant submitted strongly that, when according to the first schedule of the Code of Criminal Procedure, the offence under Section 188 is shown to be cognizable, it is the statutory right of the police to investigate the same and once occurrence of cognizable offence is brought to their notice, they have to do so, as has been done in the instant case.

As against that, if one turns to Section 195, the relevant portion is quoted hereinbelow, it can be found that the embargo put on the power of the Court to take cognizance is required to be reconciled with the said provision of the Schedule with a view to resolve the conflict which is apparent in the aforesaid statutory material.

"195(1) - No Court shall take cognizance -

(a)(i) of any of offence punishable under  
Sections 172 to 188 (both cognizable) of  
the Indian Penal Code ..... except on  
the complaint in writing of the public  
servant concerned....."

The statutory right of authority given to the police to investigate a crime which is cognizable has to be accepted and that is the underlying principle of the Procedure Code. However, at the same time, as noted from the aforesaid provision of sub-section (1) of Section 195, there is an embargo on the power of the Court to take cognizance. The offence made cognizable under the provisions of the first Schedule unless is also held to mean that the complaint has to be initiated, the cognizance of which is taken by the police, by the complainant envisaged in sub-section (1), the police also cannot take cognizance of it and the whole exercise put in by the police pursuant to the statutory authority or power given to them will be futile.

Taking the instant case into consideration, the

offence punishable under Section 188 being cognizable, the police have recorded the complaint. If, at the end of the investigation, it is found by the police that an offence is made out, chargesheet will be filed. Then the Court will be expected to proceed on the basis of report made by the Police. It being an offence punishable under Section 188, the Court, on receipt of chargesheet while taking cognizance and deciding to issue process, will have to consider also Section 195, the material part of which applicable to a case like this is quoted hereinabove. The moment that part is taken into consideration, it is by this that the Court is precluded from taking cognizance. It is, therefore, a priori that the police also cannot take cognizance of an offence under Section 188 unless the complaint is lodged by a public servant, envisaged by the said provision of Section 195. The exercise undertaken by the police would then not be nugatory and will be brought to its fruition and logical conclusion when on receipt of the police report, the Court, in turn, can also proceed further and if the charges are found to be established, visit the offender with appropriate punishment. If that could not be done, the whole exercise undertaken by the police resulting into chargesheet will remain only on a piece of paper on which no action can be taken because, there is an embargo under Section 195 of the Code.

This position can be averted when harmonious reading of the said provision of the Schedule to the Code is read along with Section 195, in the manner stated above. Obviously, therefore, the case put forth by the petitioners-accused of the said offence registered with the police authority at Bharuch has to be accepted and the provision of Section 195 of the Code has to be given its due effect. The result, therefore will be, that the petition succeeds. Accordingly the petition is allowed. The complaint is quashed and set aside. Rule is made absolute accordingly.

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